

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17794
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On October 14, 2003, the Tax Discovery Bureau (TDB) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (petitioners), proposing income tax, penalty and interest for the years 1996, 1997, 1998, 1999, 2000, and 2001 in the total amount of \$9,989.

On December 12, 2003, a timely protest and petition for redetermination was filed by the petitioners. An informal hearing has not been requested. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the NOD.

The petitioners did not file Idaho income tax returns for the years 1996, 1997, 1998, 1999, 2000, and 2001. On August 7, 2003 and September 11, 2003, the Tax Discovery Bureau sent a letter with a questionnaire to the petitioners to help the Commission properly determine the petitioners' filing requirement. The petitioners did not respond to either letter, so [Redacted]. The Commission then issued a NOD to the petitioners [Redacted].

On December 12, 2003, [Redacted] sent an e-mail in which he stated that they lived in Logan, Utah in 1996 and moved to [Redacted], Idaho in February of 1997. He stated they had failed to file their Idaho state tax forms. He stated he had the W-2s for the tax periods and questioned whether the tax due had been decreased by the income tax withheld as shown on his W-2 forms.

In another e-mail on December 12, 2003, [Redacted] stated that he did not know where to go on the web to locate the proper forms to file his taxes. He also asked what he needed to provide so

that he was not liable for Idaho income taxes for 1996.

On December 12, 2003, the tax enforcement specialist (specialist) responded by e-mail and stated:

I'll bet you filed your 1996 return with an Idaho address and that's why you show up in our information for that year. That happens a lot and is understandable. Please just send me a brief note stating when you did move to ID and I will mark that year "no filing requirement". Our web site for forms is www2.state.id.us/tax/forms . . . You will need to provide a copy of your federal return (if possible) and copies of your W-2s showing your withholding. Let me know if I can provide any additional help.

On December 12, 2003, the specialist sent a written letter to the petitioners in which she stated:

We have received your timely protest e-mailed December 12, 2003 in response to the Notice of Deficiency Determination dated October 14, 2003. You will be following up with a hard copy, with signatures, of your protest.

Your protest will be retained in the Tax Discovery Bureau of the Idaho State Tax Commission for the time being so that we can review such documentation and other information that you intend to submit with regard to the issues raised by your protest. If we are unable to reach a mutually acceptable agreement on the resolution of the issues involved, your file will be transferred to our legal department for consideration.

If you have any additional questions concerning this matter, please call.

The tax year 1996 will not be addressed any further in this decision.

On March 2, 2004, [Redacted] e-mailed the specialist and stated that he had gone over their taxes and his numbers were not far from the specialist's numbers. He wanted to know where to mail the tax forms and what his options were to avoid penalties and interest charges.

Petitioners did not file the returns, and their file was transferred to the legal department.

On May 13, 2004, the Tax Policy Specialist (policy specialist) sent the petitioners a letter

to inform them of their alternatives for redetermining a protested NOD. A follow-up letter was sent on July 1, 2004. The petitioners did not respond to either letter. When the policy specialist spoke with [Redacted] on the phone, [Redacted] stated that he intends to file their returns but he has not done so.

The requirement for the petitioners to file their income tax returns can be found in Idaho Code § 63-3030 which stated in pertinent part:

Persons required to make returns of income. -- (a)
Returns with respect to taxes measured by income in this chapter shall be made by the following:
(1) Every resident individual required to file a federal return under section 6012(a)(1) of the Internal Revenue Code.

Thus, as a matter of law, the Idaho Income Tax Act required that the petitioners file income tax returns for the years in question.

To be timely filed, Idaho Code § 63-3032(a) states that the income tax return made on the basis of the calendar year shall be filed in the office of the Idaho State Tax Commission on or before the 15th day of April following the close of the calendar year.

The statute imposing a penalty for failure to file can be found in Idaho Code § 63-3046(c) which states that when a return required by this act is not filed there may be collected a penalty of five percent (5%) of the tax due on such returns for each month elapsing after the due date of such returns until such penalty amounts to twenty-five percent (25%) of the tax due on such returns.

The Commission has declined to waive the penalty imposed in this case.

The Idaho Supreme Court, in hearing Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983), addressed whether the taxpayer was required to pay interest. The Court said:

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St. Louis, 368 S.W.2d 161 (Mo. 1963); see generally 85 C.J.S. Taxation, § 1031(c) (1954). We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that 'interest ... shall be assessed' and 'shall be collected.' This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute. Therefore, as to the interest issue we reverse with directions for the trial court to award interest from 1942.

It is well settled in Idaho that a NOD issued by the Idaho State Tax Commission is presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986). The burden is on the petitioners to show that the tax deficiency is erroneous. Id. Since the petitioners have failed to meet the burden in this case, the Tax Commission finds that the amount shown due on the Notice of Deficiency Determination is true and correct.

[Redacted]The petitioners have not provided the Commission with a contrary result to the determination of their income [Redacted] Therefore, the Commission must uphold the deficiency as modified.

WHEREFORE, the Notice of Deficiency Determination dated May 19, 2003, as MODIFIED, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax, penalty and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1997	\$ 839	\$210	\$409	\$1,458
1998	546	137	224	907
1999	1,238	310	418	1,966
2000	785	196	202	1,183
2001	1,174	294	211	<u>1,679</u>
			TOTAL DUE	<u>\$7,193</u>

Interest is computed through May 3, 2005.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioners' right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2005, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

[Redacted]